

(1999) 03 OHC CK 0029

In the Orissa High Court

Case No : Original Jurn. Case No. 2627 of 1998

Aasmita Patnaik

APPELLANT

Vs

Vice-Chancellor, Utkal University and Others

RESPONDENT

Date of Decision : 05-03-1999

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1999 Ori 172

Hon'ble Judges : R.K. Patra, J; R.K. Dash, J

Bench : Division Bench

Advocate : Purna Kumar Padhi, for the Appellant; Pramila Mohanty, N. Mohanty and Ramesh Mohanty, N. Das, S.P. Dhal, B.B. Roy, B.D. Mishra, B.N. Sinha, K.K. Panda and C. Mohapatra, for the Respondent

Final Decision : Allowed

Judgement

R.K. Patra, J.—The Utkal University in its notification No. 231 dated 22-4-1998 at Annexure-A penalised the petitioner by cancelling her result of Plus Three Final Degree Examination, 1997 and further debarring her from appearing at the next examination. The validity of the aforesaid imposition of penalty is assailed by her in this writ application.

2. Briefly stated the case of the petitioner is that she was admitted to appear in the Plus Three Final Degree Examination, 1997 as a regular candidate from K. S. O. Women's College, Darghapalna, Cuttack. Her roll muster was 137094033. On 15-4-1997 when she was taking History Paper-III examination, a flying squad entered the hall at about 12 noon. She was sitting in the front row of the hall close to the seat of the invigilator. At that time someone from behind her back threw some papers which fall by her side. She had no knowledge or scope to know who threw it as she was busy in writing her answers. A member of the flying squad lifted the paper from the floor and asked the petitioner to explain her conduct with regard to it. Besides denying her knowledge, she asserted that she did not utilise those papers for answering any question. When the result of

Plus Three Arts Examination, 1997 was published, she found that her result was withheld for alleged malpractice. To her utter surprise, she was asked in letter dated 29-12-1997 at Annexure-4 to show cause as to why disciplinary action would not be taken against her for being in possession of unauthorised material in the examination hall on 15-4-1997 and using the same in answering the questions. The petitioner submitted her explanation at Annexure-5 denying the allegations. On 29-1-1998 she appeared before the Inquiry Committee and verified the material alleged to have been found in her possession. On examination, she noticed that except the answer for short question No. 4(b)(ii) "Dandi March" where there is some similarity with the answer made by her, no other answer tallied with the incriminating material. She stated before the Inquiry Committee that question No. 4(b)(ii) is nothing but a general knowledge which could be answered by a common person. The result of her examination was not published and later she could know that her examination was cancelled and she was debarred from appearing in the next examination.

3. The Controller of Examinations -- opposite party No. 3 has filed counter affidavit. His case is that the petitioner was hooked for malpractice in Core-2 History Paper-III as per memo of the Centre Superintendent dated 15-4-1997. The Centre Superintendent sent the petitioner's admit card, her answer script in History Paper-III along with six sheets of printed incriminating materials on which she had signed. The Conducting Board examined the answer scripts and incriminating materials and opined that the petitioner had used the seized incriminating materials. Thereafter a "show cause notice" was issued to her and the Conducting Board reviewed the matter on 17-3-1998 and found her guilty. The decision was approved by this Vice-Chancellor which was published as per the impugned notification at Annexure-A.

The principal of the college who is opposite party No. 4 in the case, has filed counter affidavit. Her case is that she was Centre Superintendent during the relevant period of examination and the flying squad members told her that no material was recovered from any student but some materials were found on the floor. She, as the Centre Superintendent, as per the instruction of the flying squad forwarded the materials said to have been recovered by the flying squad from the floor along with the answer scripts without any verification.

4. Shri Padhi, learned counsel for the petitioner, contended that the penalty imposed on the petitioner being based on no evidence is unsustainable in law. In view of such contention, it is relevant to note the charges framed against the petitioner as communicated in the notice dated 29-12-1997 at Annexure A. They are as follows :

(i) On 15-4-1997 she was in possession of unauthorised materials in examination hall in contravention of Rule 4 of the Rules of Guidance of the candidate;

(ii) She used the said unauthorised materials in answering question No. 4(b)(ii) in history Paper-III.

5. Let us now consider the details of each of the charges in seriatim :

Charge No. (i):

The gravamen of this charge is that she was in possession of unauthorised material in the examination hall on 15-4-1997 in contravention of Rule 4 of the "Rules for Guidance of Candidates". The said rule reads as follows :

"Candidates should bring their own pens and mathematical instruments. No book or paper printed or, manuscripts other than their Admit Cards should be taken into the Examination Hall. Candidates should not have in their possession, while in. the hall, any book or paper printed or manuscript, even if they are unconnected with the subject of the Examination, except their Ad mission Cards, and such question papers, answer books graph shoots, etc. as are provided by the University for the examination being held at the lime."

(Emphasis laid)

The specific case of the petitioner before the Conducting Board was that on the relevant date when examination was going on, a squad entered into the hall and at that time common sitting behind her back threw some papers which fell near her seat. The member of the squad asked her as lo who threw it. As she was sitting in the front row, she could not tell as to who threw it from her behind. Learned counsel appearing for the Utkal University on our direction produced before us the relevant answer script of the petitioner as well as the report of the Centre Superintendent. In the report submitted by the Centre Superintendent there is no specific mention that the petitioner was found to be in possession of the alleged printed materials. On the contrary, it was stated in the said report that from possession of another candidate bearing Roll No. 137C-94942 some materials were detected on 28-4-1997. No material is placed before us to indicate that petitioner was found in possession of any incriminating material on 15-4-1997. In absence of any material, we are inclined to hold that the finding of guilt recorded by the Conducting Board under charge No. (i) is based on no evidence and is thus perverse.

Charge No. (ii)

The gravamen of this charge is that the petitioner answered the question No. 4(b) (ii) by utilising the printed material which was found in her possession. As already noted, we have already held that the finding of possession of unauthorised material is not sustainable. We may further state that question No. 4(b)(ii) reads as follows :

"4(b) Write a short note on the following NIMNALIKHITA BISAYAKA SANSKHIPTA TIPPANI LEKHA :

(i) xx xx xx

(ii) Dandi March Dandi Jatra."

The explanation offered by the petitioner to this charge was that her answer to question No. 4(b)(ii) might have some semblance with the alleged seized materials, but it did not tally word-by-word and line-by-line. In order to satisfy ourselves, we verified the answer script as well as the printed material alleged to have been recovered from her possession. As the question relates to a historical incident of "Dandi March", the answer would be naturally narrative in form. The Conducting Board has noted as follows :

"The case was reviewed and it was found that this candidate has urged some words and dates in the question No., referred to above."

The aforesaid finding recorded by the Conducting Board is wholly arbitrary and capricious inasmuch as no reasonable person could ever come to such conclusion. Mere mention of "some words and dates" in the answer does not ipso facto lead to the conclusion that the petitioner used those "words and dates" from the printed material. The question relates to history. Naturally historical statements and dates cannot be different. At this stage we may reproduce the first three sentences of the answer written by the petitioner which had been underlined by someone :

" 1929 MASIHA DECEMBER MASA DASA TARIKHA DINA JATIYA CONGRESARA ADHIBESANA LAHORE THARE ANUSTHITA HOITHILA. ATHIRE ADHYAKSHATA KARI THILE PANDITA JABAHARLAL NEHERU. PURBASWADHINATA CONGRESSAR ADHAKSHYA BOLI AHI ADHIBESANARE GHOSANA KARA JAITHILA."

The first three sentences from the printed material are as follows :

"BHARATIYA JATIYA CONGRESSAR ADHIBESAN DECEMBER MASA 29 TARIKHA 1929 MASIHARE LAHORE THARE ANUSTHITA HOITHILA. AHA THILA CONGRESSAR EKA AITIHASHIKA ADHIBESAN. AHI ADHIBESANA RE ADHYAKSHYATA KARI THILE PANDITA JABAHARLAL NENERU."

A bare reading of the portions extracted pre-page would indicate that there is also gulf of difference between them. The sentences written by the petitioner in her answer paper started with different facts. Had it been a case of copying, the first three sentences from the printed material would have been reproduced verbatim. This is, therefore, not a case of copying even. Thus the finding of guilt recorded in respect of charge No. (ii) is vulnerable and is liable to be quashed. We have referred to only the first three sentences because rest of the writings of question No. 4 (b) does not at all tally with the printed material.

6. We are aware of the legal position that writ Court is not competent to enter into the arena of facts to disturb a finding of facts recorded by a domestic Tribunal, particularly that of University dealing with a case of adopting malpractice in the examination. We have neither assessed nor re-appreciated the evidence available on record. This is a case where there is no evidence in support of the finding of guilt. This is also a case where the conclusion arrived at by the Conducting Board on the very face of it is arbitrary and capricious because no

prudent person could ever come to such conclusion.

7. For the reasons aforesaid, the impugned notification, so far as it relates to this petitioner, is hereby quashed and the writ application is accordingly allowed. The opposite parties are directed to re-evaluate the answer script of the petitioner (History Paper-III) and publish her result according to law within two months of receipt of writ from this Court.

There would be no order as to costs.

R.K. Dash, J.

8. I agree.